

FILED

MAR 28 2013

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY *[Signature]* DEPUTY CLERK

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS,  
SAN ANTONIO DIVISION**

XY, L.L.C.,  
Plaintiff,

v.

TRANS OVA GENETICS, L.L.C.,  
Defendant.

Cause No. SA-12-CA-00208-OLG

**ORDER ADOPTING REPORT AND RECOMMENDATION**

On this date came on to be considered the Report and Recommendation (docket no. 44) of United States Magistrate Judge Pamela Mathy in which she recommends that Trans Ova's motion (docket no. 9) to dismiss pursuant to Rule 12(b)(3) be denied, and its alternative motion to transfer this case to the United States District Court for the District of Colorado pursuant to § 1404(a) be granted. The Court has considered the motions, the recommendations, plaintiff's objections (docket no. 57), and defendant's response thereto (docket no. 61).

When a party files objections to a Magistrate Judge's Report and Recommendation, the Court reviews the matters raised by the objections *de novo*. See 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings and recommendations to which objection is made.").

In this matter, Plaintiff objects to the transfer on three grounds:

1. Plaintiff asserts that the Magistrate Judge's reliance on a finding of a mandatory forum selection clause in the § 1404(a) analysis was error;
2. Plaintiff asserts that the Magistrate Judge erred in her calculus of the weight to be given different factors in the § 1404(a) analysis; and

3. Plaintiff contends, based on purported time-to-trial statistics, that the Colorado District Court is more congested than the Court in the Western District of Texas and that the Court should consider this additional factor weighing in its favor.

After reviewing the Report and Recommendation and the papers on file in this case, the Court concludes that Plaintiff's objections are without merit and should be OVERRULED for the reasons outlined in the Magistrate Judge's Report and Recommendation. The Court has conducted a *de novo* review of the record and wholly agrees with the Magistrate Judge's weighing of the § 1404(a) factors, finding that transfer of this case is essential to guaranteeing the "convenience and fairness" to the parties and witnesses. *See Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29, 108 S.Ct. 2239, 2244 (1988) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 622, 84 S.Ct. 805, 812 (1964)). In so far as the Plaintiff has brought a new argument regarding the congestion of the Colorado courts, its evidence is insufficient to make any conclusion on that issue—especially on a division-by-division basis—and the Court finds the factor to weigh neutrally in the § 1404(a) analysis.

Accordingly, it is ORDERED that the United States Magistrate Judge's Report and Recommendation is ACCEPTED pursuant to 28 U.S.C. § 636(b)(1) and this case is hereby TRANSFERRED to the United States District Court for the District of Colorado. The Court declines to rule on any additional pending motions, finding them better suited for resolution in the Colorado court.

SIGNED this 28 day of March, 2013.

  
United States District Judge Orlando L. Garcia